

Republic of Iraq  
Federal Supreme Court  
Ref. 36 / federal /2020



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/8/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoub Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Amir Jassim Abid 7. Shihab Ahmed Majeed  
2. Mustafa Ahmed Swadi 8. Noor Al-Deen Majeed  
3. Numan Budan Munaam 9. Rahman Khalaf Hussein  
4. Hayder Abdul Ameer Kareem 10. Shatha Jameel Jarbo  
5. Hanan Anad Maarooof 11. Wissam Abdul Khalik Wuhaib  
6. Muqdad Ridha Alwan 12. Hussein Ali Issa

(Their agents the Barristers Thair Ayed Obaid, Ali Hameed Alwash, and Dhia Hameed Mousa)

The defendant: the Speaker of the Iraqi Council of Representatives/  
being in this capacity – his agents the legal counselor  
Haytham Majid Salim and the official jurist Saman  
Muhsin Ibrahim.

### **The Claim**

The plaintiffs claimed that the defendant/ being in this capacity issued Law No. (57) Of 2015 amended by law No. (20) of 2009 and published in the Iraqi Gazette numbered (4395) on 25 January 2016, where article (12/1<sup>st</sup>/Dal) stipulated (that those who are covered by this law without state employees, the public sector and the mixed sector shall be granted a pension as follows: first- D - for those who are disabled by the disability by 29% and below a monthly salary equivalent to half of the minimum pension stipulated in the Unified

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Retirement Law No. (9) of 2014 or any law that replaces it). The aforementioned article was amended under Law No. (2) Of 2020 (Second Amendment Law of the Compensation of Those Affected by Military Operations, Military Mistakes and Terrorist Operations No. (20) Of 2009 Amended) whereas article (7) of the last amendment on (the text of the article (12) If the law shall be annulled, and replaced by the following: Article 12- Taking into account the provisions of article (11) of the Law, the covered persons are granted a pension according to the following: Secondly, the text of paragraph (Dal) of the item (1<sup>st</sup>) and item (4<sup>th</sup>) of the article (12) of the Law shall be annulled and replaced by the following: -Dal- 29% of the disability is granted without an injury bonus and calculated according to the equation (the disability ratio multiplied by (500,000) dinars for each degree of disability) and this matter shall be applied to previous cases as of the effective date of Law No. (20) Of 2009 and the retirement committee disburses the bonus and settles its amounts). The plaintiffs, therefore, requested that the defendant/ being in this capacity shall be called upon for pleading and to judge that the last amendment was unconstitutional and for the following reasons: 1. The last amendment harmed a large number of injured persons, estimated at 600,000, six-hundred thousand injured, and that the mechanism of legislation of the law was contrary to the text of article 2/1<sup>st</sup>/Jim of the Constitution, which stipulated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution) and the amendment also violates the provisions of the article (13/1st and 2nd) of the Constitution which stipulated (1st- this Constitution is the preminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception). Second: no law that contradicts this Constitution shall be enacted, Any text in any

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regional constitutions or any other legal text that contradicts this Constitution shall be considered void). 2. The amendment (case's subject) have missed an economic opportunity for the plaintiffs, most of whom enjoyed the rights of the social protection net and were spent on them in the form of monthly payments and when promoting their pension transactions according to the law in question, the Public Pension Department required that the public pension department bring a disclaimer and waive the rights granted to them by the social protection net. Thus, the latest amendment is contrary to the provisions of Article (30/1<sup>st</sup>) of the Constitution, which stipulates (the State shall guarantee to the individual and the family – especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing). 3. The amendment listed that the pension committee shall carry out the process of money dispensing retroactively starting from the date when law No. (20) for 2009 become in force and this matter violates the provisions of the article (19/9<sup>th</sup>) of the Constitution which stipulated (laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees). 4. What was listed in the amendment also contradicts article (32) of the Constitution which stipulates (the State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law). Accordingly, for other reasons and reasons that the honorable court considers, they requested to call upon the defendant/ being in this capacity to plead and to judge by annulling all amendments to Law No. 2 of the year (2020) and to burden him with all fees, expenses and the advocacy fees. According to the provisions of the article

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(1/3<sup>rd</sup>) of the Federal Supreme Court Bylaw No. (1) for 2005, this case has been registered at this Court by the number (36/federal/2020). The defendant/ being in this capacity has been notified with its petition and documents according to the provisions of the article (2/1<sup>st</sup>) of the aforementioned Bylaw, his agent answered by the draft dated 7/9/2020 which included that the case of the plaintiffs is lacking to the legal substantiations for the following reasons: 1- the text (challenge subject) had been enacted by the ICR according to the provisions of the article (61/1<sup>st</sup>) of the Constitution, and it was a legislative choice according to the jurisdictions of the ICR which determined by the Constitution. 2. What was listed in the case of the plaintiffs that the pension committee had taken procedures that may violate the Constitution in clearing the amounts as a resulting liability for those who are included by the law (amending subject) which challenged before this Court. This matter is out of the Federal Supreme Court jurisdiction. 3. What was listed in the case that the amendments on the law (challenge subject) had deprived those who are covered by these amendments of the rights guaranteed by the Constitution according to the article (32) of which. This matter violates the fact that the ICR had enacted the handicappeds and people with special needs care Law No. (38) for 2013, and for the aforementioned reasons he requested to reject the case of the plaintiffs. The agents of the plaintiffs answered by their answering draft dated 17/11/2020 on what was listed in the agent of the defendant/ being in this capacity draft, their answering draft included: 1- the ICR has made a legislative mistake in the text (challenge subject) whereas it issued two opposite amendments, the first one by the Law No. (57) for 2015 which wished to guarantee the rights of those who were covered, as for the second amendment No.

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(2) for 2020, it was contradicts the first amendment which adjudged by abolishing the rights of those who were covered by it according to what listed in the article (12/1<sup>st</sup>/Dal) of which. Moreover, it also demanded from the covered with this amendment to bring a disclaimer liability from the social protection net in addition to the procedure taken by the pension committee according to the second amendment issued by the ICR by clearing all the amounts. This matter had been achieved by returning to the sponsor, worthy to mention that the sponsor is obliged by the procedures not to pay the amount and to deduct all the amounts which were dispensed previously. 2. The Law No. (38) for 2013 which the agent of the defendant/ being in this capacity pointed to, the article (17) of which included (those with disability and special needs as follows: Third- a cash monthly subsidy which corresponding to the ratio of disability that evaluated by a medical committee according to the social protection net) if the benefit from the aforementioned law wasn't achieved because according to the first amendments No. (57) for 2015 the covered were charged to bring a disclaimer liability from the aforementioned net, and they refund all their liability to the social protection net and they became deprived of any pension rights and privileges, as well as they had been deprived of the rights which granted to them by the social protection net. On 13/June/2021 the agents of the plaintiffs presented a request that includes the issuance of a custodian order to pause all the legal procedures related to the law (challenge subject) until the case is being resolved. After completing the procedures according to what is listed in the article (2/1<sup>st</sup>) of the Bylaw, a date for argument has been set and all parties were notified according to the article (2/2<sup>nd</sup>) of the aforementioned Bylaw. On the set day of the argument, the Court has been convened

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and the agents of the plaintiffs attended as well as the agents of the defendant/ being in this capacity attended. The public in the presence of both parties argument proceeded, the agents of the plaintiff repeated what was listed in the petition of the case and they requested to judge according to it, the Court had noticed that the plaintiff Hussein Ali Issa is under-age when the case was initiated and the agents of the attendant plaintiffs in the argument are agents of the obligatory custodian of him. The agents of the plaintiffs clarified that the ICR had issued law No. (38) for 2013 and the plaintiffs were covered by it according to what was listed in the article (17/3<sup>rd</sup>) of which, and they had been granted a monthly subsidy shall be dispensed to them by the social protection net. After that, the aforementioned Council issued law No. (57) for 2015 (the first amendment of the law No. (20) for 2009) the plaintiffs according to this law had been granted pension salaries after the refund of the amounts in their liability which were received by them from the social protection net. Later, the ICR issued law No. (2) for 2020 (the second amendment of the law No. (20) for 2009 amended) according to this text they had been granted a pension salary according to what was listed in law No. (57) for 2015 (the first amendment law for the law No. (20) for 2009). Amendment No. (2) for 2020 for 2020 was achieved according to the article (12/1<sup>st</sup>/Dal) of which, to grant an injury bonus and should be calculated according to the equation listed in the aforementioned text and it must take effect on all previous cases starting from the date of this law becomes in force, the law No. (20) for 2009. The pension committee shall carry out the bonus expenditure and clear the amounts related to it. The Federal Supreme Court decided to introduce the Head of the National Pension Committee as a third party to inquire from him, the agent of

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the third party attended the session of 11/July/2021 and he clarified that the disability for those who are covered by the law No. (20) for 2009 it differed from one person to another, therefore, a continuation of granting them the pension salaries according to law No. (57) for 2015 will produce financial burdens on the State, therefore, it has been amended by law No. (2) for 2020 according to it they have been granted an injury bonus according to the disability degree. Accordingly, and according to the last amendment the clearance shall be made between the salaries they received and their entitlement from the bonus, returning the salaries received by them must be corresponding to the increase on the bonus amount which each one of them deserved and according to the disability ratio. The Court has completed its inquiry from the third-party/ being in this capacity, then it decided to move him out of the argument, and the Court decided to reject the request of the plaintiffs' agents to issue a custodian order about pausing the legal procedures produced by the law No. (2) for 2020 the second amendment of law No. (20) for 2009 because the characteristic of urging was not available because along time have passed on initiating the case. Moreover, the stopping the procedures by the Court considers a pre-opinion in the case's subject. The agents of both parties repeated their requests and sayings, whereas nothing left to be said, the Court has made the end of the argument clear and the day 3/August/2021 was set as a date to issue the decision. On this day the Court has been convened and issued the following decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court found that in their lawsuit, the plaintiffs requested to judge that article (12/1<sup>st</sup>/Dal) of the law No. (2) for 2020 is unconstitutional (the second amendment of law No. (20) for 2009) which stipulated ((the disability ratio multiplied by (500,000) dinars for each degree of disability) and this matter shall be applied to previous cases as of the effective date of Law No. (20) Of 2009 and the retirement committee disburses the bonus and settles its amounts)). The plaintiffs relied on the violation of the aforementioned law for the provisions of the article (2/1<sup>st</sup>/Jim) and (13/1<sup>st</sup> and 2<sup>nd</sup>) and (19/9<sup>th</sup>) and (30/1<sup>st</sup>) and (32) of the Constitution of the Republic of Iraq for 2005, whereas article (2/1<sup>st</sup>/Jim) of the Constitution stipulated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution) and article (13) of the Constitution stipulated (first- This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception, second- no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void). This Court finds that there is no conflict between the challenged text and the constitutional text above-mentioned because the challenged text didn't violate the preeminence of the Constitution and it is binding all over Iraq, therefore, the case of the plaintiffs in this concern has no substantiation. As for the article (19/9<sup>th</sup>) of the Constitution which stipulated (Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees). Whereas the challenged text for unconstitutionality included the

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phrase (it may take effect on the previous cases starting from the date when this law become in force No. (20) for 2009 and the pension committee shall carry out the dispensing of the bonus and settle all amounts). The aforementioned phrase doesn't contradict the provisions of the article (19/9<sup>th</sup>) of the Constitution which stipulated (laws shall not have retroactive effect unless stipulated otherwise) this mean that the text in the law is permissible to have retroactivity on the aforementioned text, but doesn't include the laws of taxes and fees. This exception doesn't include the laws of taxes and fees, therefore, there will be no conflict between the legal text and the constitutional text. Moreover, there is no conflict between the challenged text and the article (30/1<sup>st</sup>) of the Constitution which stipulated (The State shall guarantee to the individual and the family – especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing) because the constitutional text is related by the basic rights of living for individuals, family, woman, social, moral, and health insurance. As for the claim of the plaintiffs about the contradiction between the challenged text with the text of the article (32) of the Constitution which stipulated (the State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law). The law of handicapped and those with special needs had been issued in the number (38) for 2013 and there will be no contradiction. Accordingly, the Court decided to reject the case of the plaintiffs each of Amir Jassim Abed, Mustafa Ahmed Sawadi, Numan Budan Munam, Hayder Abdul Ameer Kareem, Hanan Anad Maarroof, Muqdad Ridha Alwan, Shihab Ahmed Majeed, Noor Al-Deen

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Ahmed Noor, Rahman Khalaf Hussein, Shatha Jameel Jarbo, Wissam Abdul Khalik Wuhayeb, and decided to reject the case of the plaintiff Hussein Ali Issa from the aspect of litigation because he is underage and to burden the plaiuntiffs the fees, expenses, and the advocacy fees for the agents of the defendant/ being in this capacity amount of (100,000) thousand Iraqi dinars. The decision has been made unanimously, final and decisive according to the article (93) and (94) of the Republic of Iraq Constitution for 2005 and the articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) Of 2021 and has been made clear on 16/Muharam/1443 Hijri, 24 August 2021.

**Signature of  
The president**

**Jasem Mohammad  
Abbood**

**Signature of  
The member**

**Sameer Abbas  
Mohammed**

**Signature of  
The member**

**Haidar Jaber Abed**

**Signature of  
The member**

**Haider Ali Noory**

**Signature of  
The member**

**Khalaf Ahmad Rajab**

**Signature of  
The member**

**Abdul Rahman  
Suleiman Ali**

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**Signature of  
The member**

**Diyar Muhammad  
Ali**

**Signature of  
The member**

**Ghalib Amir  
Shunayen**

**Signature of  
The member**

**Ayoob Abbas Salah**